forters, but contained no similar provision regarding pillows, was discriminatory, and unconstitutional as class legislation.

The states by adopting the Fourteenth Amendment could not have intended to impose restraints on the exercise of their powers for the protection of the safety, health or morals of the community. *Mugler v. Kansas,* 123 U. S. 623; *Powell v. Pennsylvania,* 127 U. S. 678; *Minn. & St. L. R. R. Co. v. Beckwith,* 129 U. S. 26. The determination as to the proper exercise of the police power is not exclusively with the legislature but is subject to the supervision of the courts. *Lawton v. Steel,* 152 U. S. 133; *Atkin v. Kansas,* 191 U. S. 207. The legislature in carrying out an ordained purpose may classify, whenever the propriety in doing so appears to exist. *Chicago Ry. Co. v. R. R. Com.,* 173 Ind. 469; *Cotting v. Kansas City Stock Yards Co.,* 183 U. S. 79. The classification as a general rule must be based on some sound reason and must be applicable to all who are within the natural scope of its enactment. *Gulf Ry. Co. v. Ellis,* 165 U. S. 150; *State v. Pennoyer,* 65 N. H. 113; *State v. Gabroski,* 111 Iowa 496; *Barber v. Connolly,* 113 U. S. 31. However, having a reasonable basis, it need not operate with mathematical nicety. *Batchell v. Wilson,* 204 U. S. 36. A legislative classification may rest on narrow distinctions, and a discrimination is valid if not arbitrary in that it is outside of the wide discretion which the legislature may exercise. *Ozan Lumber Co. v. Union County Bank,* 207 U. S. 251. *Heath & Milligan Mfg. Co. v. Worst,* 207 U. S. 338 (distinction between mixed and paste paints); *German Alliance Ins. Co. v. Lewis,* 233 U. S. 389 (statute exempting farmers' mutual insurance companies from its operation). In the recent case of *Chang Sing et al. v. City of Astoria,* 155 Pac. 378, the supreme court of Oregon, on the other hand, declared a statute invalid as class legislation and discriminatory in which stores selling hardware, dry goods, and the like were regulated, but those selling tinware, crockery and tobacco were not included. So, as regards the principal case, it is difficult to ascertain on what reasonable ground, in the light of the authorities, the legislature could have drawn a valid distinction between the subjects included and those excluded from the operation of the act.

J. McD.

MASTER AND SERVANT—INJURIES TO THIRD PERSON CAUSED BY SERVANT—SCOPE OF EMPLOYMENT.—MANIACI V. INTERURBAN EXPRESS CO., 182 S. W. (Mo.) 981.—Where a consignee of goods, while signing a receipt, under protest, at request of agent of the Express Company, was shot by said agent suddenly and without just cause, *held,* that a declaration setting forth these facts states a cause of action, in that the agent was acting within the scope of his employment. Woodson, C. J., and Blair and Walker, JJ., *dissenting.*

A master is liable for the wilful or malicious acts of his servants where they are done in the course of his employment and within its scope, i. e., to promote the master's business. *Houston & T. Cent. Ry. Co. v. Bell,* 73 S. W. (Tex.) 56; *Peddie v. Gally,* 109 N. Y. App. Div. 178. On the other hand, the master is not liable where the servant is acting for personal reasons. *Brown v. Boston Ice Co.,* 178 Mass. 108;

Fairbanks v. Boston Storage Warehouse Co., 189 Mass. 419; *Meehan v. Morewood*, 52 Hun (N. Y.) 566. In determining whether or not an act is within the scope of employment, the purpose of the act, rather than its method of performance, is the test. *Cobb v. Simon*, 119 Wis. 597. An assault by a servant may be within the scope of the employment so as to render the master liable. *McClung v. Dearborne*, 134 Pa. St. 396; *Barden v. Felch*, 109 Mass. 154; *Houston & T. Cent. Ry. Co. v. Bell*, supra. However, an assault by a servant not committed as a means or for the purpose of performing the work which he was employed to do is ordinarily not within the scope of his employment and the master is not liable. *Mogk v. Chicago City Ry. Co.*, 80 Ill. App. 411; *Fairbanks v. Boston Storage Warehouse Co.*, supra; *Meehan v. Morewood*, supra. If a servant shoots a third person, the act is ordinarily not within the scope of his employment, especially where he is not a watchman or detective or the like. *Lytle v. Crescent News & Hotel Co.*, 27 Tex. Civ. App. 530; *Turley v. B. & M. Ry. Co.*, 70 N. H. 348; *Bowen v. Ill. Cent. Ry. Co.*, 136 Fed. 306 (Defendant company held not liable for the shooting of a consignee of goods by a freight agent, without just cause, after the consignee had signed a receipt and was about to leave the office). In the principal case the act complained of was clearly unnecessary to the performance of the agent's duties, and the ruling seems contrary to the weight of authority.

E. J. M.

RAILROADS—LEASE OF TRACKAGE—LIABILITY OF LESSOR.—CENTRAL OF GEORGIA RY. CO. v. BESSINGER, 87 S. E. (Ga.) 920.—Plaintiff in error leased trackage rights to a lumber company. Defendant in error, an employee of lumber company, was injured while being carried to his work on a lumber train. *Held*, employee sustained relation of passenger to railroad company to the extent that it is bound to exercise extraordinary diligence to keep from injuring him. Russell, C. J., *dissenting*.

In the absence of authority to lease its road a railroad company that so leases is liable for all the negligence of the lessee affecting the public. *Hukill v. Maysville & B. S. R. Co.*, 72 Fed. 745. This is because it is contrary to public policy that public duties imposed by law be shifted without authority, and the lessee is therefore treated as the agent of the lessor. *Arrowsmith v. Nashville & D. R. Co.*, 57 Fed. 165. To grant trackage rights over a railroad is not an abdication of duties but a proper exercise of the franchise to operate a railroad. *Union Pacific v. C. R. I. & P. R. Co.*, 163 U. S. 564. Under such conditions there is no relation of principal and agent, and the only liability of the owner company is for failure to keep its tracks free from defects. *Hamilton v. Louisiana & N. W. R. Co.*, 117 La. 243. The holding of the principal case seems to stand alone.

R. C. W.

TITLE TO WILD GAME—CHANGE OF COMMON LAW RULE, BY STATUTE.—PEOPLE V. WILLIAMS, 155 PAC. (Colo.) 323.—The defendant was charged with unlawfully and wilfully having in his possession a portion of the